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July 25, 1997

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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JUL 25 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY


**Re: MCI Telecommunications Corporation Petition for Rulemaking -- Billing and  
Collection Services Provided By Local Exchange Carriers for Non-Subscribed  
Interexchange Services, RM 9108**

Dear Mr. Caton:

Pursuant to the Commission's June 25, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of Excel Communciations, Inc.

Please date-stamp the enclosed extra copy of these Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

  
C. Joël Van Over  
Michael R. Romano

Counsel for Excel Communications, Inc.

Enclosures

cc: International Transcription Service  
Darius B. Withers, Common Carrier Bureau (w/diskette)

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Billing and Collection Services Provided )  
By Local Exchange Carriers for Non-Subscribed )  
Interexchange Services )  
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RM-9108

COMMENTS OF EXCEL COMMUNICATIONS INC.

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Dated: July 25, 1997

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## **SUMMARY AND OVERVIEW**

The Comments of Excel Communications, Inc. can be summarized as follows:

**Jurisdiction Over LEC Billing and Collection Services:** The Federal Communications Commission (“Commission”) has previously concluded that billing and collection services provided to interexchange carriers (“IXCs”) by local exchange carriers (“LECs”) are not subject to regulation under Title II of the Communications Act of 1934 (“1934 Act”). The Commission has, however, retained ancillary jurisdiction over such services under Title I of the 1934 Act, and has exercised authority over billing and collection services on several occasions as changes in competitive conditions and telecommunications services demanded action. Changes in the competitive dynamic of the interexchange marketplace now dictate further action. As incumbent LECs prepare to enter the interexchange markets, and are using their provision of billing and collection services to leverage their entry, the Commission should require these incumbent LECs to provide reasonable and nondiscriminatory access to billing and collection services for all requesting IXCs. In addition, the Commission should take the lead in coordinating the development of LEC billing and collection clearinghouses that will provide real-time access to information that is essential in billing both non-presubscribed and presubscribed long distance calls.

**Provision of Billing and Collection Services on a Nondiscriminatory Basis:** Incumbent LECs have an effective monopoly over billing and collections for non-presubscribed long distance calls, and are capitalizing upon this monopoly to drive up the costs for IXCs and billing and collection clearinghouses. Because IXCs cannot establish direct-billing in any cost-efficient manner, the incumbent LECs can impose unreasonable terms and conditions upon the IXCs. Those IXCs who object to the unreasonable terms face the possibility that the LEC will simply refuse to contract

altogether, making it virtually impossible for the IXC's to bill and collect from customers in that LEC's region.

Many IXC's also depend upon LEC billing and collections for their presubscribed long distance services. Again, most IXC's cannot bear the significant capital costs associated with establishing a billing and collection system of their own, and even if they are able to produce their own bills, it is clear that the overwhelming majority of customers prefer a consolidated local and long distance bill. Since only the LEC's can provide such a bill at this time, they have the ability insist upon onerous contractual provisions or increased fees on a *take it or leave it* basis. As a result of this trend, IXC's are currently left with the undesirable (and potentially fatal) alternatives of either accepting a LEC's burdensome terms, or rejecting the LEC's terms and foregoing customer billing and collection in that LEC's region. The Commission must act quickly to address this anticompetitive trend by promulgating reasonable nondiscrimination rules that extend to both the non-presubscribed and the presubscribed services markets.

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Interexchange Services	)	
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**COMMENTS OF EXCEL COMMUNICATIONS INC.**

Excel Communications, Inc. and its subsidiaries ("Excel"), by undersigned counsel, hereby files comments pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on June 25, 1997, concerning MCI Telecommunications Corporation's ("MCI") Petition for Rulemaking regarding local exchange carrier billing and collections services.

Excel supports MCI's petition requesting the Commission to initiate a rulemaking to adopt a reasonable nondiscrimination rule to assure access to local exchange carrier ("LEC") provided billing and collection services by interexchange carriers ("IXC"). Excel also urges the Commission to expand the proposed rulemaking to consider nondiscrimination standards for billing and collections to presubscribed long distance carriers. Excel further urges the Commission to undertake an investigation<sup>1</sup> to determine the extent to which effective competition exists in billing and collections and the extent to which incumbent local exchange carriers ("ILECs") continue to control elements of billing and collection and are in a position to leverage this control as they seek to enter

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<sup>1</sup> See 47 C.F.R. §§ 1.401, 1.430.

interexchange markets.

## **I. STATEMENT OF INTEREST**

Excel is the ultimate parent of Excel Telecommunications, Inc., the fifth largest long distance company in the United States in terms of presubscribed lines. Excel's operating subsidiaries are authorized by numerous state regulatory commissions to provide resold interexchange services nationwide. Through a unique marketing infrastructure that utilizes independent sales representatives that are themselves purchasers of Excel services, Excel's subsidiaries offer a diversified array of telecommunications services, including paging service, calling cards, and dial-around casual calling. As interexchange carriers Excel's subsidiaries rely upon local exchange carriers to bill and collect for calls placed over Excel's presubscribed lines, as well as for calls that Excel's customers make via Excel's 10XXX number or its calling cards.

## **II. BACKGROUND**

### **A. The 1986 Deregulation of LEC Billing and Collection Services**

In 1986 the Commission deregulated billing and collection services by local exchange carriers.<sup>2</sup> The Commission did so based largely upon the dramatic marketplace changes occasioned by AT&T's divestiture of the Bell Operating Companies and the termination of AT&T's partnership agreements with other local exchange carriers. Before divestiture, local exchange carriers performed billing and collection services for their own long distance partner/affiliate, AT&T. After divestiture,

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<sup>2</sup> *Detariffing of Billing and Collection Services*, 102 FCC.2d 1150 (Jan. 29, 1986). In that order, the Commission defined billing and collections as including: recording IC message, detail aggregating the details to create individual messages, (a completed call originated by an IC's end user), applying the IC's rates to such messages, processing these rated message into customer invoice form, mailing bills, collecting payments, accepting customer deposits, handling customer inquiries and investigating billing evasion activities.

the local exchange carriers continued to bill AT&T's long distance service, but were no longer billing and collecting for their own affiliated service offering when they billed end users for AT&T services.

The Commission framed its Billing and Collection Order, based upon this local versus long distance service market dichotomy. First, the Commission found that "billing and collections for a communications service that the LEC offers individually or as a joint offering with other carriers is an incidental part of a communication service." However, the Commission distinguished billing and collections for the offering of another unaffiliated carrier, finding that billing and collection services in this instance "is not a communication service for purposes of Title II of the Communication Act."<sup>3</sup>

Based upon these findings, the Commission concluded that billing and collection services provided to IXC's by LEC's are not subject to regulation under Title II of the Communications Act,<sup>4</sup> but the same services, when offered in conjunction with a telecommunication service by the LEC itself or LEC affiliate is subject to Title II regulation.

Although the Commission found that it retained ancillary jurisdiction to regulate billing and collection services to interexchange carriers under Title I of the Communications Act, the Commission declined to exercise its jurisdiction at that time. The Commission explained the exercise of its Title I jurisdiction must be based upon "a record finding that such regulation would

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<sup>3</sup> *Id.* at ¶ 30.

<sup>4</sup> *Id.* at ¶ 34.

‘be directed at protecting or promoting a statutory purpose.’”<sup>5</sup> The Commission found no such statutory purpose at that time, concluding that:

. . . because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period.

Significantly, the Commission did exercise its Title I jurisdiction over the billing and collections recording function for a transition period by requiring LECs to offer a call detail recording service through 1989 or until the equal access conversion process permitted interexchange carriers to obtain call detail directly. Thus the Commission held:

Although this service will not be tarified after 1986, the LECs will be required to offer reasonable terms for this service. We are imposing these requirements pursuant to our Title I powers *in order to ensure that interexchange carriers will be able to provide their communications in an efficient and economical manner.*<sup>6</sup>

Finally, although the Commission also declined at that time to regulate the provision of billing name and address (BNA) information by LECs, the Commission stated:

. . . we would consider requiring carriers to make this information available to interexchange carriers if problems develop. We fully expect local exchange carriers to make BNA information readily available at reasonable prices, and we will not hesitate to take

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<sup>5</sup> *Id.* at ¶ 37 (citing *Second Computer Inquiry*, 77 FCC.2d 384, 433 (1979), *aff’d on recon.* 84 FCC.2d 50, 92-93 (1980), *aff’d* 693 F.2d 198 (D.C. Cir. 1982), *cert. denied* 461 U.S. 938 (1983)).

<sup>6</sup> *Id.* at ¶ 46 (emphasis supplied). The Commission further distinguished the provision of call detail as it cannot be supplied by third party vendors because it is a product of network switching operations.

appropriate action if these concerns are not met.<sup>7</sup>

As new telecommunications services and competitive issues have emerged, the Commission has re-evaluated various aspects of billing and collection services. For example, in its BNA Order,<sup>8</sup> the Commission found that the provision of BNA information is a communications common carrier service subject to tariffing and to the Commission's Title II jurisdiction. The Commission later clarified that the provision of a customer's BNA information to its presubscribed carrier is required by [the Commission's] "equal access rules."<sup>9</sup> In that Order, the Commission also expressly addressed the provision of BNA to interexchange carriers providing 10XXX 1 + calls. The Commission explained:

. . . we now conclude that a LEC may disclose BNA information associated with 10XXX 1 + calls. This BNA information may be disclosed to the IXC carrying those calls whenever the customer chooses to use that IXC rather than the one to which the originating loop is presubscribed. The act of dialing 10XXX, like the acts of using a calling card or accepting a collect call, implies that the calling party has agreed to pay the charges imposed by that IXC for that call, and thus that the caller has agreed to BNA disclosure for purposes of receiving a bill for that call. Accordingly, we do not interpret our rules to preclude disclosure of BNA for 10XXX 1 + calls.

*Id.* at ¶ 41.

Further, in the LEC Calling Card Order and the recent reconsideration of that order, the

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<sup>7</sup> *Billing and Collection Services*, 1 FCCR 445, ¶ 13 (Memorandum Opinion and Order, Nov. 6, 1986).

<sup>8</sup> *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd at 4478 (1993) (BNA Order).

<sup>9</sup> *BNA Order, Third Order on Reconsideration*, 11 FCCR 6835, ¶¶ 34, 40 (Feb. 9, 1996).

Commission required LECs offering a joint use calling card to provide nondiscriminatory access to card-validation and screening data.<sup>10</sup> The Commission found that validation and screening services are incidental to the provision of local exchange access service, and are a prerequisite to interstate collect and third party calls in addition to joint use calling card calls.<sup>11</sup> The Commission also required any LEC entering into an agreement with one interexchange carrier to honor its calling card to agree to honor calling cards from any other IXC requesting an agreement.

**B.     The Commission Should Re-Examine the Role of Billing and  
Collections for IXC Competition.**

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The Commission should now extend the principles it has embraced in earlier proceedings “to ensure that interexchange carriers will be able to provide their communications in an efficient and economical manner.”<sup>12</sup> Indeed, if the purposes of the Telecommunications Act of 1996 (the “Act”) are to be realized, the Commission must guarantee nondiscriminatory access to LEC billing and collection services by all IXCs.

The Act’s overriding purpose is to engender enduring competition in local exchange markets and promote increased competition in interexchange markets.<sup>13</sup> As the Commission has noted, “the Telecommunications Act of 1996 fundamentally changes telecommunications regulation.”<sup>14</sup> While

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<sup>10</sup> *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478 (1993) (BNA Order).

<sup>11</sup> *BNA Order, Reconsideration*, 1997 WL 18044 (FCC, Jan. 17, 1997).

<sup>12</sup> Footnote 6, *supra*.

<sup>13</sup> *Interconnection Order*, 11 FCCR 15499, ¶ 3 (Aug. 8, 1996).

<sup>14</sup> *Id.* at ¶ 1.

much of the new regulatory imperative has been focused upon assuring effective competition in local markets, it is equally important to assure that incumbent LECs do not leverage their control over aspects of the local exchange market as they enter long distance markets. If the Commission does not act to assure nondiscriminatory access to LEC billing and collections services in the long distance market, as it has done in the local markets by finding that OSS services, including billing and collection functions, are network elements, LECs will leverage their competitive advantage against competing IXCs.<sup>15</sup>

Several changes occasioned by the Act make a re-examination of billing and collection services by ILECs critical. First, and perhaps most importantly, ILECs will be entering interexchange markets.

This market change reverses the market structure the Commission relied upon when it deregulated billing and collections in 1986. Thus, the jurisdictional dichotomy established in 1986, whereby billing and collections is subject to Title II regulation when provided in conjunction with a service offered by the LEC or a LEC affiliate but not when billing and collections is offered to an IXC, is no longer sound.

As the Commission recognized in the LEC Calling Card Order, if a LEC favors one interexchange carrier over another, the competitive impact is significant. In that order, the Commission therefore found that if a LEC enters into an agreement to honor one IXC's credit card, it must honor calling cards from other IXCs as well. This rule should extend equally to billing and collections. If a LEC provides billing and collections for its own interexchange services, it should

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<sup>15</sup> *Interconnection Order*, 11 FCC 15499 at ¶¶ 516-528 (Aug. 8, 1996).

provide the same service on a nondiscriminatory basis to any requesting IXC.

Additionally, until LECs have entered long distance markets, and nondiscrimination rules are tested, LECs must be required to provide reasonable access to billing and collection services for all requesting IXCs on a nondiscriminatory basis.

In summary, just as the Commission has determined that operations support services, including billing and collections, are network elements in the local exchange market, it must now take a similar step in the newly competitive interexchange markets.<sup>16</sup> In the new competitive marketplace, LEC provided billing and collection services to interexchange carriers must be considered an operational support service incidental to exchange access. Without this designation the local exchange and interexchange markets will remain artificially bifurcated, and the only carrier able to offer seamless service, at least for many years, will be the incumbent LEC.

Second, as competitive local exchange carriers ("CLECs") enter the market, every indication suggests that most CLECs will be unable to provide billing and collection services to interexchange carriers, or may be unwilling to provide these services, at least in the beginning. Without CLEC billing and collection agreements however, many non-presubscribed calls will not be billable. Thus, the Commission must take the lead in assuring that LEC billing and collection clearinghouses develop to prevent the collapse of nonpresubscribed interexchange services during the transition to local exchange competition. All LECs must be required to provide real time access to pre-call validation information and to provide information to toll clearinghouses so that all long distance calls may be billed and so that every interexchange carrier may offer both presubscribed and non-

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<sup>16</sup> *Interconnection Order*, 11 FCCR 15499, ¶¶ 516-528; affirmed in relevant part, Iowa Utilities Board v. FCC, 1997 WL 403401 (8th Cir.).

presubscribed long distance service economically and efficiently.

The Act specifically provides the tools to assure that LEC clearinghouses emerge. The Act contemplates industry coordination “to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.” 47 U.S.C. § 256(a)(2). The Act further grants the Commission an important role in assuring that this statutory purpose is achieved. As the Act states:

[t]he Commission shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service;

47 U.S.C. § 256(b)(1). Excel urges the Commission to take an active role to assure that local and long distance carriers fully consider reasonable options for the clearinghouse coordination required for the billing and collection of nonpresubscribed calls.

### **III. BILLING AND COLLECTION SERVICES MUST BE OFFERED ON A NONDISCRIMINATORY BASIS**

#### **A. Non-presubscribed Interexchange Service**

##### **1. The LEC Monopoly Over Billing and Collections for Non-presubscribed Long Distance Service.**

ILECs have an effective monopoly over billing and collections for non-presubscribed long distance calls, including 10XXX 1 +, collect, third party, LEC joint use calling card, and 900 service calling. An IXC cannot bill for these calls directly because, although the IXC’s network carries the calls, the IXC does not have a pre-existing subscription relationship with the customers to be billed for these calls. In other words, the IXC has no billing information.

IXC’s carrying non-presubscribed interexchange calls must therefore rely upon the LEC-

provided billing and collection. Since 1986, when the Commission ordered detariffing of billing and collection services, LECs have provided billing and collection services to IXC's for non-presubscribed calls under contractual arrangements. Under these arrangements, the IXC provides Automatic Number Identification ("ANI") and call rating information to the appropriate LEC. The LEC includes these charges with its local telephone bill, collects these charges, deducts its billing and collections fee, and remits the balance to the IXC.

## **2. There Is No Practical Alternative to LEC Billing and Collections.**

There is currently no realistic billing and collection alternative for non-presubscribed calls. The only theoretical alternative, direct billing by the IXC, is cost prohibitive. Unassailable facts support this conclusion.

First, non-presubscribed customers take advantage of their ability to use various carriers. While this flexibility benefits consumers, it raises the likelihood that direct bills for these calls will not be paid. A customer may use one or more IXC's for their long distance calling using 10XXX access, they may use 1-800-Collect (MCI) OR 1-800-Call-ATT (AT&T) for some collect calling or use third party billing for other calls. As a result, one customer may use two, three or even ten long distance providers in a one month period, making only one or two calls on a particular IXC network during a particular billing period.

Thus, without LEC billing for non-presubscribed calls, the consumer who desires the advantages of 10XXX, collect calling or third party billing could receive three, five or more separate invoices per month, depending upon the individual consumer's calling pattern. Because these invoices typically contain charges for one or only a few calls, the consumer often considers them a nuisance. As a result, an IXC's bad debt will inevitably escalate. As Ron Evans, an OAN Services,

Inc. representative reported at the Commission's recent Billing and Collections Forum, billing and collections clearinghouses that have experimented with direct billing have discovered extremely low collection rates: "A fifty percent collection rate is considered very good, and that's obviously not something that could keep any carrier in business."<sup>17</sup>

Second, if an IXC was forced to bill its 10XXX customers directly, it would incur significant capital costs to purchase or upgrade its billing system, it would have to purchase BNA, typically on a per call basis at LEC tariffed rates ranging from \$0.20—\$0.80 per query, it would have to hire additional personnel to perform the billing and collections function, it would incur the costs of paper, envelopes and postage, and, as noted, its bad debt ratio would increase dramatically.

Because of these additional costs, the IXC would be forced to raise its rates to levels that would no longer be competitive. The effect would be unmistakable: only LECs, or the largest IXCs able to operate certain lines of business at a loss would be able to offer 10XXX and other non-presubscribed service. The universal "competitive" 10XXX service consumers have come to expect would be an ironic casualty of the Telecommunications Act of 1996.

### **3. BNA Information Is Not Sufficient.**

The assertion that the availability of BNA enables IXCs to bill non-presubscribed customers is wrong. The availability of BNA is but one small component of the billing and collections process. Because the average monthly billing to a non-presubscribed customer is typically small, the cost of BNA, added to the other high fixed costs associated with direct billing simply make it economically impractical to bill for these calls except through the LEC. As MCI notes in its petition, its average

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<sup>17</sup> *Transcript of Public Forum on Local Exchange Carrier Billing for Other Businesses*, June 24, 1997, at 16 of 66 (the "Billing and Collection Forum").

monthly invoice for non-presubscribed calls is only \$6.82. MCI further estimates that its cost to invoice these non-presubscribed customers would average \$3.47 per invoice. The economics of direct billing decisively preclude it.

As Rochester Telephone Company's Gregg Sayre aptly summarized at the Commission's recent Billing and Collection Forum:

If we don't have a billing and collection contract with a particular carrier, the question is, what are they going to do? The carrier can always block things like casual calling, or third number traffic, if they don't have an arrangement pre-existing with the end user. The carrier can always just let the message fall on the floor because there just aren't enough of them to make billing them worthwhile. I don't think either of those two alternatives are particularly acceptable to most long distance carriers, and probably not good business practice, and so I am not proposing either of them. But, they do stand out there as alternatives.<sup>18</sup>

If IXC's are deprived of LEC billing and collections for non-presubscribed calls, or if LEC's impose unreasonable terms and rates, or if LEC's discriminate in favor of their own IXC businesses, the impact will be devastating to all non-LEC IXC's. However, this anticompetitive impact will be felt most heavily by smaller IXC's that are competitive only by virtue of their relatively low overheads, by IXC's that offer non-presubscribed services principally or exclusively, and by IXC's that market heavily to residential customers, where noncollectables are highest.

#### **B. Presubscribed Long Distance Service**

Many large and small IXC's rely upon LEC billing and collections for their presubscribed long distance service, under the same billing and collections services agreements that provide for

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<sup>18</sup> *Transcript of Public Forum on Local Exchange Carrier Billing For Other Businesses*, June 24, 1997 at 7 of 66.

LEC billing of non-presubscribed calls. These IXCs prefer LEC billing because it is cost efficient, it satisfies strong consumer preferences for one consolidated local and long distance bill, and because the collection rate exceeds 90% when billing is consolidated.

As LECs prepare to enter the long distance market, they are becoming more aware of the advantages they will enjoy if they perform billing and collections only for themselves. Emerging LEC billing and collection practices reflect this.

Various LECs have announced their desire to cease billing and collection for unaffiliated IXCs, others have announced that they will not renegotiate existing contracts, while others have announced onerous contract provisions or significantly raised contractual fees on a *take it or leave it* basis. Whether LECs refuse to provide billing and collection services at all, or provide them in a manner that raises an IXC's costs beyond those reasonably related to services the LEC actually provides, the anticompetitive effect is the same.

Without timely action by the Commission, the trend will continue, and LECs will proceed as they always have to leverage their control over essential functions. While IXCs' vulnerability in the billing and collection services area is greatest in the non-presubscribed services market, it extends to the presubscribed long distance services market as well.

The Commission cannot "wait and see" what means the LECs ultimately select to disadvantage their IXC competitors in the billing and collections area. Many IXCs would be out of business within months if one major LEC terminates its billing and collections agreements.

#### **IV. CONCLUSION**

LEC entry into interexchange markets fundamentally changes LEC economic incentives in billing and collections for IXCs. The basic factual premise that rationalized the Commission's

deregulation of billing and collection in 1986 — that LECs no longer provided billing and collection services for an affiliated IXC — has vanished. LECs are again preparing to provide billing and collections services for their own long distance services, just as they did for AT&T. These services must now be provided under the discipline of reasonable nondiscrimination rules, just as exchange access must be provided on a nondiscriminatory basis to LEC-affiliated and non-affiliated IXCs.

Respectfully submitted,



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Dated: July 25, 1997